IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 45 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF CENTRAL EXCISE & CUSTOMS

Versus

KAY TEX PROCESSOR (P) LTD.

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Appearance:

MR ASIM J PANDYA for Petitioner No. 1

RULE NOT RECD BACK for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 26/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference Application, the Commissioner of Customs & Central Excise, Surat-I, has prayed for a direction to the CEGAT, Mumbai, to refer the following question of law to this Court under Section 35-H(1) of

the Central Excise Act, 1944.

"Whether the provisions of fine and penalty as contained in the Central Excise Act, 1944, are applicable to the Man Made Fabrics which are subjected to Additional Excise Duties in terms of Additional Duties of Excise [Goods of Special Importance] Act, 1957 ?"

2. Rule is served on the respondent and the respondent has filed reply received by the Registry on 24th June 2002. The respondent has relied upon the decision of the Delhi High Court in the case of M/s. Pioneer Silk Mills Ltd., (1995) 80 ELT 507, Delhi. The respondent has contended in his reply that the aforesaid decision of the Delhi High Court is not reversed by the Hon'ble Supreme Court nor any stay is granted and hence the same judgment should be followed and the present Reference Application deserves to be rejected.

3. By the judgment dated 22nd January 2002 in CECG Reference No. 1 of 2000, this Court has considered the aforesaid question and after considering the decision of the Delhi High Court in M/s. Pioneer Silk Mills Ltd., (Supra), this Court has answered the question in the affirmative, that is in favour of the Revenue and against the assessee. In the above judgment, the Court has in terms held as under :-

"10. The provisions of penalties are devised to ensure that the excise regulations are enforced and the recovery of excise dues is secured. The process of collection of revenue involves enacting methods of collection. The procedure of assessment and collection are intertwined with confiscation and penalty, once violation of excise regulations is established, as contemplated by the Rules imposing penalties. The object of the provisions to impose heavy penalties is to ensure that the revenue is protected against procrastination, carelessness or deceit which if practised on a large scale, would make collection of the taxes a difficult task.

11. For the above reasons, it is clear to us that all the provisions of the Central Excise Act, 1944 and the Rules made thereunder, including the provisions relating to confiscation

and imposition of penalty contained therein, are applicable to the levy and collection of the additional duty of excise under section 3(1) of the Additional Duties of Excise Act, 1957 in the same manner as they already apply in relation to the levy and collection of such goods under the Central Excise Act, 1944 and Rules framed thereunder.

12. We accordingly hold that the provisions relating to confiscation and imposition of penalty contained in the Central Excise Act, 1944 and the Rules thereunder are applicable to man-made fabrics which are liable to additional duty of excise under the First Schedule of section 3(1) of the Additional Duties of Excise Act and are "excisable goods" mentioned in Schedule to the Central Excise Tariff Act, 1985, by virtue of incorporation by reference under section 3(3) of the Additional Duties Act, of all the provisions contained in the Central Excise Act, 1944 Rules made thereunder.

The question referred to us is answered accordingly in favour of the Revenue and against the assessee. There shall be no order as to costs."

4. In view of the above judgment, nothing further is required to be done except directing Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai to rehear Appeal No. E/339/95, Mumbai on the question of consideration and penalty in light of the law laid down by this Court in the aforesaid judgment dt. 22.1.2002 in CECG Ref. No.1 of 2000.

5. Rule is made absolute to the aforesaid extent with no order as to costs. Writ be issued forthwith.

[ M.S. Shah, J. ]

rmr. [ K.A. Puj, J. ]